

DOCKET FILE COPY ORIGINAL

From: <JNORRIS@HKLAW.COM>
To: <WTBSecretary@fcc.gov>
Date: Thu, Mar 28, 2002 12:43 PM
Subject: RE: DKT 01-74 - Opposition filed 3/25/02

Mr. Caton - Re our conversation on Wed. afternoon -- Can this be posted on website today?

<<USCellular Opposition.pdf>>

Judy A. Norris
Senior Legal Secretary
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, DC 20006-6801
(202) 828-1856; Fax (202) 955-5564
jnorris@hklaw.com

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Reallocation and Service Rules)	GN Docket No. 01-74
for the 698-746 MHz Spectrum Band)	
(Television Channels 52-59))	

To: The Commission

**OPPOSITION TO
PETITIONS FOR RECONSIDERATION OR CLARIFICATION**

United States Cellular Corporation on behalf of itself and its subsidiaries (collectively "US Cellular"), by its attorneys, opposes the Petition for Clarification or Reconsideration of the Spectrum Clearing Alliance ("SCA") filed February 5, 2002, as supplemented and the Petition for Reconsideration of Spectrum Exchange Group, LLC and Allen & Company ("Spectrum Exchange") filed March 8, 2002 in the above-captioned proceeding.

US Cellular has been an active participant in the Commission's proceedings leading up to the adoption of reallocations and service rules for the 698-746 MHz spectrum band and supports use of this spectrum for the expansion of the capacities of cellular radio telephone and other land mobile radio services of rural carriers. US Cellular also strongly supports the Commission's decision adopting MSA/RSA licensing for 12 MHz of spectrum.

The Commission's band plan and geographic service area decisions for the MSA/RSA portion of the Lower 700 MHz band reasonably and properly reflect the

Congressionally mandated public interest goals of promoting economic opportunity and competition, of dissemination of licenses among a wide variety of applicants, and of "balancing the playing field" so that small and rural carriers have workable opportunities to participate in Auction #44 and to provide spectrum-based services.

The efforts of SCA and Spectrum Exchange (i) to alter key features of the Commission's band plan and (ii) to remove protections against additional intrusions in the Lower 700 MHz band by analog television operations relocating from the Upper 700 MHz should be rejected. The Commission's commendable efforts to create opportunities for small and rural carriers by adopting MSA/RSA licensing and to protect against new analog television allotments or stations in the Lower 700 MHz band should be supported by denying the petitions of SCA and Spectrum Exchange.

DISCUSSION

1. We strongly object to the argument of SCA that "...small and rural wireless operators...may not have sufficient resources to adequately compensate incumbent broadcasters for vacating Channel 59."¹ The Commission's objectives in these proceedings should not be about the level of revenue to be received by bandclearing stations. In any event, whether some bidders for MSA/RSA licenses may not have "deep pockets" is irrelevant since there will be open bidding for this spectrum and affected EAG winning bidders can bid for this spectrum.

¹ SCA Supplement to Petition, p.6

2. Likewise we disagree with SCA that MSA/RSA licensing under the band plan will "...needlessly complicate already complex negotiations."² The winning bidder or bidders for this spectrum for areas corresponding to any television market will be determined at the conclusion of Auction #44. It is pointless to speculate about the possible number of such bidders at this time.

3. US Cellular also rejects the proposition argued by Spectrum Exchange "...[i]f some valuable transaction must be delayed by a free rider problem, it is better to delay relatively low-value transactions rather than relatively high-value transactions."³ The Commission has adopted a band plan and MSA/RSA allocations under that band plan based on the statutory objectives referenced above. The so-called "interchange of a geographic allocation "as proposed by Spectrum Exchange, if adopted, would "delay" MSA/RSA licensing, and clearly be contrary to the early achievement of these statutory objectives. On Spectrum Exchange's point about relative transactional value, Congress has already made clear that the Commission's decisions may not be based "...on expectations of Federal revenues." See Section 309(j)(7)(A) of the Communications Act of 1934, as amended.⁴

4. As discussed above, the Commission has taken important steps in these proceedings to "balance the playing field" for small and rural providers by adopting MSA/RSA licensing opportunities. We strongly object to SCA's proposals

² id.

³ Spectrum Exchange Petition, p.5

⁴ 47 USC 309(j)(7)(A). "Consideration Prohibited...In making a decision pursuant to Section 303(c) to assign a band of frequencies to a use for which licenses or permits will be issued pursuant to this subsection, and in prescribing regulations pursuant to paragraph (4)(C) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection."

which would permit bandclearing stations in the Upper 700 MHz band to relocate into the MSA/RSA channel blocks. Such a policy, if adopted, would delay commencement of service on MSA/RSA licenses. This also could mean that the costs of any relocation efforts to clear these analog television uses of Channel 52-59 spectrum would be borne by the licensees of Lower 700 MHz spectrum, including possibly small and rural providers holding MSA/RSA licenses. If so, the consequences under the SCA proposals would be to unfairly shift the cost of analog television relocations for Channel 60-69 stations from the EAG licensees in the Upper 700 MHz band to licensees, including MSA/RSA licensees, in the Lower 700 MHz band.⁵

CONCLUSION

For the reasons discussed here, we request that the Petitions of SCA and Spectrum Exchange be denied.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

By _____
George Y. Wheeler

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, DC 20006
(202) 457-7073

⁵ US Cellular also objects to the proposals of Spectrum Exchange (Petition, pp. 7-10) for the Commission to substitute other combinations of Lower 700 MHz spectrum for MSA/RSA licensing ... including a pairing involving Channel 52 spectrum. This would present " ... difficult adjacent channel interference issues" because of the adjacency of this spectrum to Channel 51 which is part of the permanent "core" spectrum for television broadcasters. The Commission's bandplan should not be altered to disadvantage MSA/RSA licensees in this manner.

March 25, 2002

Its Attorneys

WAS1 #1069945 v1